UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RONALD MELTON, et al.,	)	**Case No. C-1-01-528**
Plaintiffs,	:)	**(Judge Spiegel)**
-v-	:)	
BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO, et al.,	:) :)	**MOTION TO COMPEL DISCOVERY WITH MEMORANDUM IN SUPPORT**
Defendants.	:)	

Pursuant to Rule 37 of the Federal Rules of Civil Procedure and Rule 37 of the Local Rules of the Southern District of Ohio, Defendant Robert Pfalzgraf, M.D., respectfully requests that this Court enter an order compelling discovery against Plaintiffs Ronald Melton, Clara Poland, Debbie McCullom, Sue Goodman, Chester Melton, Glenna Royce, Clayton Melton, Brenda Martin, and Terry Melton. The grounds for this motion are more fully explained in the attached Memorandum in Support and the Affidavit of Jamie M. Ramsey, a copy of which is attached hereto. The parties attempted to resolve this discovery dispute through extrajudicial means, pursuant to Local Rule 37.1, but have been unable to do so.

Respectfully submitted,

/s/ Louis F. Gilligan

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Attorneys for Defendants, Tom Neyer, Jr., John S. Dowlin and Todd Portune, on behalf of Hamilton County, Ohio, and Robert Pfalzgraf, M.D.

MEMORANDUM IN SUPPORT

On August 3, 2001, Plaintiffs filed their Complaint in the above-captioned matter asserting several purported state law causes of action and a civil rights claim under 42 U.S.C. §1983. On February 26, 2002, Plaintiffs filed their Second Amended Complaint for damages arising from alleged "negligent, careless, reckless, malicious, willful, wanton, and intentional actions or omissions of Defendants arising out of photographs taken of the body of Perry Melton, Deceased, for commercial purposes while his body was in the care, custody and control of the Hamilton County Cororoner." [Plaintiffs' Second Amended Complaint, ¶1].

On November 6, 2002, Plaintiffs were served with Defendant's First Set of Interrogatories and Document Requests. [*Affidavit of Jamie M. Ramsey*, ¶2, Exhibit A]. After being given a generous extension of time in which to respond, and only after Defendant threatened to file a motion to compel, Plaintiffs finally served their responses to Defendant's discovery requests on January 31, 2003. [*Id.*, ¶3, Exhibit B]. Plaintiffs' responses, however, were incomplete and, in the case of some Plaintiffs, non-existent. [*Id.*]. For example, although Plaintiffs seek damages for personal "emotional distress" injuries, no medical records of any kind were produced beyond limited workers' compensation records for one Plaintiff. [*Id.*]. In addition, three of the Plaintiffs, one of whom has since passed away, failed to respond at all. [*Id.*].

On July 18, 2003, Defendant forwarded to counsel for Plaintiffs HIPAA compliant medical authorizations in an effort to obtain medical records for those individual Plaintiffs who stated in their discovery responses that they had sought medical treatment or counseling of some sort. [Ramsey Aff., ¶4, Exhibit C]. Defendant also demanded discovery responses from the three Plaintiffs who never bothered to respond. [*Id.*]. Defendant began actively seeking complete responses so that the depositions of the respective Plaintiffs could proceed. [*Id.*, ¶ 5].

On August 19, 2003, counsel for Defendant contacted counsel for Plaintiff by letter once again because Defendant still had not received the requested medical authorizations and still had not received discovery responses from Plaintiffs Chester Melton, Clayton Melton, and Glenna Ross.[1] [Ramsey Aff., ¶6, Exhibit D]. Over the next several months, counsel for Defendant and/or his staff made various telephone calls to the offices of counsel for Plaintiffs in an effort to obtain the requested information. [*Id.*, ¶7]. On November 7, 2003, counsel for Defendant once again requested in writing that Plaintiffs provide the information that, by that time, was one year past due. [*Id.*, ¶ 8, Exhibit E].

On or about November 12, 2003, Plaintiffs produced medical authorizations for only two Plaintiffs. [Ramsey Aff., ¶9, Exhibit F]. Unfortunately, neither of the authorizations was complete and, as a result, Defendant now was back to square one with respect to medical records. [*Id.*]. On November 18, 2003, in response to a voicemail message from counsel for Defendant, counsel for Plaintiff stated in a letter that he endeavored to provide the requested information with "due dispatch." [*Id.*, ¶10, Exhibit G]. Counsel for Plaintiff also stated that "the number of individuals involved is costing [sic] unexpected delays." [*Id.*]. One would assume, however, that even with nine plaintiffs, one year would be enough time in which to gather the requested information.

At a hearing in November of 2003, this Court established February 28, 2003, as the deadline for conducting discovery. In light of this fast approaching deadline, counsel for

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[1] Since the time Plaintiffs were served with the discovery requests at issue, Plaintiff Glenna Ross has passed away. Counsel for Plaintiffs have failed, however, to provide any documentation regarding the matter; they also have failed to indicate whether her purported claims will be pursued by her estate. If her claims still will be pursued, Defendants must receive responses to the discovery requests.

Defendant made one last effort to obtain the information without involving this Court. [Ramsey Aff., ¶11] On December 3, 2003, counsel for Defendant contacted counsel for Plaintiffs by letter and outlined the information that still needed to be produced, which, basically, was everything Defendant had been requesting by letter and voicemail since July, 2003. [*Id.*, ¶12, Exhibit H]. As of the filing of this motion, counsel for Plaintiffs has not responded to this December 3, 2003, correspondence; nor have Plaintiffs produced any additional documents or information. [*Id.*, ¶13]. For this reason, Defendant had no choice but to file the instant motion.

After having more than one year to comply with Defendant's discovery requests, and after at least six months of correspondence from counsel for Defendant's requesting compliance, it is difficult to believe that Plaintiffs' counsel actually has been working to obtain the requested information and medical releases as they continuously assert in correspondence. Defendants must begin taking Plaintiffs' depositions. Without the requested medical information, Defendants are not in a position to do so. Because the discovery deadline in this case is less than three months away, Defendants no longer are in a position to accommodate counsel for Plaintiffs' requests for additional time in which to comply; nor can Defendants continue to rely upon counsel for Plaintiffs' general assurances that the information is forthcoming.

Rule 37(a)(2)(B) of the Federal Rules of Civil Procedure provides that if a party fails to answer an interrogatory submitted under Rule 33 or requests for production under Rule 34, the party propounding discovery may move for an order compelling answers and inspection of documents. In this case, Defendants, over the course of the last year, have made numerous attempts to obtain information from Plaintiffs, including formal discovery requests. Counsel for Plaintiffs, however, has chosen to provide as little information as possible (including no information at all as to some of the Plaintiffs) while at the same time continuing to prosecute their claims.

For the foregoing reasons, this Court must compel Plaintiffs to comply with Defendant's discovery requests. Otherwise, discovery in this case regarding Plaintiffs' claims will remain at a standstill.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon David W. Kapor, 36 East Seventh Street, Suite 1520, Cincinnati, Ohio 45202, Michael B. Ganson, 36 East Seventh Street, Suite 1540, Cincinnati, Ohio 45202, Stephen J. Patsfall, Patsfall, Yeager & Pflum, LLC, One West Fourth Street, Suite 1800, Cincinnati, Ohio 45202, Glenn V. Whitaker, Esq., Vorys, Sater, Seymour and Pease, LLP, 221 East Fourth Street, Suite 2000, Cincinnati, Ohio 45202 and Larry E. Barbiere, Schroeder, Maundrell, Barbiere & Powers, 11935 Mason Road, Suite 100, Cincinnati, Ohio 45249 via electronic filing, this 18th day of December, 2003.

/s/ Jamie M. Ramsey
Jamie M. Ramsey

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